

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Cedillo, Washington Analyst: Darrine Distefano Bill Number: AB 1992
Related Bills: See Legislative History Telephone: 845-6458 Introduced Date: 02-18-2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Disclosure of Tax Return Information to Charter Cities if Written Agreement

SUMMARY

Under the Administration of Franchise and Income Tax Laws (AFITL), this bill would permit the Franchise Tax Board (FTB) to disclose certain specified income tax information to tax officials of charter cities. Disclosure would have to be made under a written agreement and would be limited to information regarding taxpayers operating a business within a charter city and a taxpayer's name, address, social security or taxpayer identification number, and business activity code. Use of the information would be limited to employees of the taxing authority of a charter city.

EFFECTIVE DATE

This bill would be effective January 1, 2001.

LEGISLATIVE HISTORY

AB 385 (99/00, failed passage in Senate Revenue and Taxation), AB 701 (97/98, vetoed by the Governor) and AB 1063 (97/98, remained in Senate Revenue and Taxation) would have permitted the FTB to disclose income tax information to tax officials of charter cities. AB 83 (99/00, remained in Senate Revenue and Taxation) would have prohibited a city from requiring that a person who is a teleworker obtain a business license or permit or pay a business tax or registration fee solely because the person receives income from work performed at or from the person's place of residence.

BACKGROUND

California has two kinds of cities: charter cities and general law cities. A charter city is one that receives its powers from the state Constitution. Charter cities may adopt their own ordinances and regulations, so long as they do not conflict with state law. With some exceptions, general law cities may use only those powers that are specifically enumerated by the state. However, general law cities may levy any tax that may be levied by any charter city. According to the League of California Cities, as of March 2000, California has 474 incorporated cities of which 101 are charter cities.

Board Position:

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_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Alan Hunter for GHG

3/22/00

In 1995, the City of Los Angeles, as part of a business tax amnesty program, requested that the Franchise Tax Board (FTB) furnish information on unlicensed businesses that were operating in that city and filing state tax returns but that had failed to pay appropriate city taxes. Because of confidentiality restrictions discussed in *Specific Findings* below, the FTB was unable to provide the requested information directly to the City of Los Angeles. However, the FTB was able to receive information from the city, identify businesses paying state but not city tax, and notify those businesses of the city's amnesty program. The FTB provided no taxpayer information to the city.

Currently, any local government requesting tax information on a specific taxpayer(s) is required to send an affidavit to both the FTB and the taxpayer requesting such information.

Local governments do not know the identity of taxpayers operating unlicensed businesses and, consequently, do not have the information necessary to provide such an affidavit. Absent this affidavit, information cannot be provided.

SPECIFIC FINDINGS

Current federal law provides rules for the disclosure of federal tax information. Federal law provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees except for authorized purposes. Agencies allowed access to federal return information include certain federal agencies and state agencies, such as the FTB. A return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the Internal Revenue Code. Where an unauthorized disclosure has occurred, taxpayers whose privacy has been invaded may bring a civil suit for damages and may recover the greater of \$1,000 or the amount of the actual damages sustained as a result of the disclosure. Punitive damages also may be recovered if the disclosure was willful or grossly negligent.

Current state law prohibits the disclosure of any taxpayer information except as specifically authorized by statute. Any FTB employee or member responsible for release of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

California law, in limited instances, permits the FTB to release individual tax return information to the following: legislative committees, the Attorney General, the California Parent Locator Service, the directors of Social Services and Health Services, California tax officials, such as the Board of Equalization (BOE) or the Employment Development Department (EDD), the Controller, and the Department of Motor Vehicles. Agencies must have a specific reason for requesting the information, including tax investigation, verifying eligibility for public assistance, locating absent parents to collect child support, or locating abducted children. For some agencies, only limited information may be released, such as the taxpayer's social security number and address.

California law permits the FTB to release tax information according to tax return sharing agreements with the Internal Revenue Service (IRS), the Multistate Tax Commission (MTC), and taxing authorities of other states and Mexico. The exchange must relate to the enforcement of tax laws and the information must not be made public.

Current state law provides that the FTB may respond to requests from local taxing agencies to furnish information on a taxpayer. The request must be in the form of an affidavit signed under the penalty of perjury stating that the purpose of the request relates to an investigation of the tax specified in the request and that the information will be used in the ordinary performance of the applicant's duties.

This bill would allow the FTB to enter into an agreement for the exchange of confidential tax information with a charter city, thereby allowing the FTB to provide tax information to charter cities without the use of an affidavit. The tax information that could be provided would be limited to information regarding taxpayers operating a business within a charter city and limited to the taxpayer's name, address, social security or taxpayer identification number, and business activity code. Use of the information would be limited to employees of the taxing authority of a charter city.

Since **this bill** references the existing disclosure section, information would have to be provided under a reciprocal agreement between the FTB and the charter city. Information under this agreement could be used only for tax administration purposes as required by existing law.

Policy Considerations

California's voluntary compliance tax system relies on taxpayers accurately reporting their income. If taxpayers perceive that tax information is being shared or compromised, the voluntary compliance system may be jeopardized.

Implementation Considerations

Department staff has identified the following implementation considerations and is available to assist the author's office staff with these and any other considerations that may arise.

This bill does not define "operating a business". Many employees may work from home while employed by a company, rather than being a home-based business. The author may wish to clarify for which types of business operations the FTB would be asked to provide tax information.

This bill does not clarify how the FTB would identify whether a taxpayer operates a business within the charter city. The taxpayer may file a return using a residential address, but it is unclear whether zip codes are conterminous with city boundaries. Moreover, many returns are filed with the address of the tax practitioner, not the taxpayer.

The Employment Development Department (EDD), not the FTB, is charged with determining whether an individual is properly classified as an employee or independent contractor (operating a business).

FISCAL IMPACT

Departmental Costs

The AFITL allows the FTB to be reimbursed for costs incurred to provide information to another taxing authority. Based on an assumed 100 requests for information over a three-year period, the costs to establish and process requests would be approximately \$153,000 per year. Costs could be higher or lower, depending upon the number of requests actually received.

Tax Revenue Estimate

This bill would have no identifiable revenue effect on state income tax receipts.

BOARD POSITION

Pending.